

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVELL EGGLESTON,

Defendant-Appellant.

UNPUBLISHED

May 19, 2005

No. 252326

Wayne Circuit Court

LC No. 01-012819-01

Before: Murphy, P.J., and White and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as on leave granted after remand from the Supreme Court his plea-based conviction for felon in possession of a firearm, MCL 750.224f, felony-firearm, MCL 750.227b, and third-degree retail fraud, MCL 750.356d(4). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the court erred in denying his motion to withdraw his guilty plea when it failed to comply with the terms of the sentence agreement. Defendant asserts that the court erred in sentencing him to four days to five years' imprisonment for the felon in possession conviction, where the plea bargain was that he would be sentenced to time served, ostensibly without the five-year maximum.

A defendant who pleads guilty in reliance on a judge's preliminary evaluation with regard to an appropriate sentence has an absolute right to withdraw the plea if the judge later exceeds that evaluation. *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993). However, maximum sentences are fixed by law, and a lesser maximum provided in a sentence is a nullity. *In re O'Dell*, 365 Mich 429, 431; 113 NW2d 220 (1962). The maximum sentence fixed by statute should be read into such a sentence. *Id.*

When a statute requires a mandatory condition in sentencing, defendants are on notice that the condition will be applied to them. *People v Ronowski*, 222 Mich App 58, 61; 564 NW2d 466 (1997). Where maximum sentences have been fixed by statute, defendant cannot assert that he was unaware of this fact in reaching the sentence agreement. Had the court imposed the sentence requested by defendant, it would have been invalid. Where there was no error in the

plea taking procedure, the trial court did not abuse its discretion in denying the motion to withdraw the plea. *People v Wilhite*, 240 Mich App 587, 594; 618 NW2d 386 (2000).

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Michael R. Smolenski